
From: Sullivan, Greg
Sent: Monday, July 24, 2017 5:22 PM
To: Armstead, John A.; Banister, Beverly; Flournoy, Karen; Guerriero, Margaret; Kowalski, Ed; LaPosta, Dore; Scott, Jeff; Stenger, Wren; Studlien, Susan; Bohan, Suzanne; Bingham, Kimberly; Carroll, Craig; Cobb, David; daw, harry; El-Abdaoui, Fatima; Gorman, John; Green, Jamie; Hayes, Sharon; Klevs, Mardi; McFadden, Kelly; Rodriguez, Roberto; Star, David; Toney, Anthony; TROMBADORE, CLAIRE; Arrazola, Ignacio; Barra, Michael; Bussey, Carol; Eppers, Jim; Martinez, Hugh; Matthews, Julie; Rubini, Suzanne; Sawyer, William; Shapiro, Naomi; Spiegelman, Nina; Swan, Russell; Wagner, Michael; Weekley, Erin; Berg, Elizabeth; Bigioni, Neil; Castanon, Lisa; Coe, Mary; Cozad, David; Figur, Charles; Frey, Bert; Harrison, Ben; Humphrey, Leslie; Jerison, Joanna; LaBoda, Sarah; Lupton, Jane; Madigan, Andrea; McGuire, Karen; Nelson, Leverett; Payne, James; Quast, Sylvia; Schaaf, Eric; Schefski, Kenneth; Seager, Cheryl; Sierra, Eddie; Simon, Paul; Skelley, Dana; Skelley, Dana; Stern, Allyn; Stoy, Alyse; Tommelleo, Nancy; Zucker, Audrey; Bohan, Suzanne; Moore, Audrey; Calvo, Estrella; Chow, James; Cobb, David; Thompson, Christopher
Cc: Lott, Don; Trivedi, Adrienne; Walker, Yolaanda; Vizard, Elizabeth
Subject: Extension of FIFRA Section 7 ESA Pilot
Attachments: FIFRA Section 7 ESA Pilot Memo.pdf

FIFRA Enforcement Managers,

This email provides for an additional three (3) months extension of the FIFRA Section 7 Expedited Settlement Agreement Pilot. We are allowing its continued use in cases where initial contact with the respondent occurs on or before October 22, 2017.

The extension will provide additional time to distribute the draft revised policy and model documents for regional review. We expect to circulate the revised document for regional review in early August. Please continue to use the FIFRA ESA Pilot pursuant to the guidance in the July 22, 2014, transmittal package (attached).

If you have any questions about the FIFRA ESA Pilot or this extension, please contact Adrienne Trivedi, Acting Chief of the Pesticides and Tanks Enforcement Branch, at (202) 564-7862.

Greg

Gregory Sullivan, Director
Waste and Chemical Enforcement Division
U.S. Environmental Protection Agency, OECA, OCE
1200 Pennsylvania Ave, NW (MC2249A)
Washington, DC 20460
202 564-1298

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<http://www.epa.gov/compliance/complaints/index.html>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 22 2014

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: FIFRA Section 7 Expedited Settlement Agreement Pilot Program

FROM: Susan Shinkman, Director
Office of Civil Enforcement

TO: FIFRA Division Directors, Regions 1-10
FIFRA Enforcement Managers, Regions 1-10
Regional Counsels, Regions 1-10

This memorandum announces the commencement of an Expedited Settlement Agreement (ESA) Pilot to address FIFRA Section 7 violations. The pilot will last for one year from the date of this memorandum, in accordance with the parameters and conditions specified in the enclosed Program Elements document (Attachment A). As we implement this pilot, Regions should continue to target for violations that pose the greatest risk to impact human health and the environment and to address them with all available enforcement tools.

The FIFRA ESA Pilot is a tool for Regions to more efficiently resolve cases that involve certain minor violations of FIFRA. As you may recall, J.P. Suarez's memorandum entitled, *Use of Expedited Settlements to Support Appropriate Tool Section* (2003) (Suarez Memorandum), prohibited the use of ESAs for repeat violators. OECA has decided that the repeat violator prohibition will not apply to this pilot.¹ The repeat violator prohibition will not apply to a violator that has received a single prior Notice of Warning and/or a prior ESA for a Section 7(c) violation. As discussed in the Program Elements, Regions may issue a second ESA to the same respondent for the violations identified in this pilot, but are to do so only where the first ESA attained significantly increased compliance.

Attached to this memorandum is a list of the violations eligible for ESA treatment under the pilot (Attachment B). Also, to facilitate implementation of the pilot, Attachments C and D, respectively, provide a model notice letter and settlement agreement.

At the end of the one-year pilot period, OCE will evaluate the effectiveness of the pilot and determine whether to continue it. The Program Elements document describes the information we will need from the Regions to conduct this review.

¹ This exception to the Suarez Memorandum was approved by Assistant Administrator Cynthia Giles on May 8, 2014.

I want to thank the Regions for your input that has assisted in the development of this pilot, and welcome your feedback throughout the pilot implementation period. If you have questions or need assistance, please feel free to contact Brian Joffe at (202) 564-2229.

Attachments

- A. Program Elements
- B. Eligible Violations
- C. Model Notice Letter
- D. Model Settlement Agreement

ATTACHMENT A

FIFRA Section 7 Expedited Settlement Agreement (ESA) Pilot Program Elements

I.	Overview
II.	OECA ESA Policy
III.	Eligible Violations
IV.	Exclusions
V.	Respondent Eligibility and Repeat Violators
VI.	Complete Enforcement Program
VII.	Penalties
VIII.	Environmental Benefits
IX.	Enforcement Response Policy Enforcement
X.	Pilot Use and Duration
XI.	Pilot Review
XII.	Model Documents

I. Overview

The FIFRA expedited settlement agreement pilot (FIFRA ESA Pilot or Pilot) is intended as a tool for Regions to more efficiently resolve cases that involve certain minor violations of FIFRA. This document details the criteria a case must meet to be eligible for an ESA and other aspects of Pilot implementation.

II. OECA ESA Policy

The FIFRA ESA Pilot is consistent with OECA's 2003 guidance, *Use of Expedited Settlement to Support Appropriate Tool Selection* (OECA ESA Policy).¹ The OECA ESA Policy establishes the following principles.

First, ESAs should be “part of a complete compliance and enforcement strategy” that encompasses the full range of available tools.

Second, ESA programs must meet five criteria. Violations must:

- Be easy to determine;
- Be easy to fix;
- Be “minor” (e.g., recordkeeping);
- Occur in programs “that have a limited enforcement presence and limited resources relative to the size of the regulated universe”; and
- Occur in programs where there is a need to increase enforcement presence.

¹ Memorandum; J.P. Suarez (12/21/2003) (*OECA ESA Policy*).

Third, the use of ESAs is *not* appropriate where:

- Violations "result in significant harm to human health or the environment or may present an imminent and substantial endangerment to human health or the environment"; or
- The violator is *not* required to take some affirmative action, in addition to payment of the penalty.²

Note that for purposes of this pilot, the OECA ESA Policy's prohibition against ESAs for repeat violators does *not* apply under certain circumstances, as discussed in Section V (Respondent Eligibility.)

III. Eligible Violations

Under the FIFRA ESA Pilot, an ESA may be used only for a case that involves the following specifically-identified Section 7(c) reporting violation, as identified in the FIFRA Section 7 Enforcement Response Policy (Section 7 ERP³):

- A. Late Reporting**
 - B. Non-Reporting**
 - C. Incomplete Report – Minor**
 - D. Incomplete Report – Major**
- (False reporting is not ESA-eligible.)

Attachment B lists the particular violations that are eligible for ESA treatment under this Pilot. Note that certain violations from the Section 7 ERP are not included in Attachment B and, thus, are not eligible for ESA treatment, because they fall within an exclusion of the OECA ESA Policy and/or this Pilot. (In other words, the list of ESA-eligible violations is exhaustive, not illustrative; if a violation is not included in Attachment B, it is not ESA-eligible.) See Section IV, below. Also, every violation in a case that is addressed by an ESA must be eligible under this pilot.

IV. Exclusions

In addition to the limitations above (Section III) and consistent with the OECA ESA Policy, an ESA for purposes of this pilot may not be used if:

- The violator deliberately conceals evidence of non-compliance; fails or refuses to provide records or access needed to determine compliance; or is otherwise obstructive or uncooperative with the compliance monitoring processes or early settlement. (Thus, for example, false Section 7 reporting is not ESA-eligible.); or

² *Id.*

³ Enforcement Response Policy for FIFRA Section 7(c) Establishment Reporting Requirements (Updated May 2010) (Section 7 ERP); <http://www.epa.gov/enforcement/waste/documents/policies/fifra-erp-section7-051910.pdf>.

- The violation results in significant harm to human health or the environment or may present an imminent and substantial endangerment to human health or the environment.

V. Respondent Eligibility and Repeat Violators

Any size or type of regulated entity could be ESA-eligible (i.e., eligibility is based on the type and number of violations, not on the violator's size or presumed sophistication). Nonetheless, even if a case meets the foregoing criteria for ESA treatment (see Section III), the Region may determine that an ESA is not the appropriate enforcement vehicle for a particular violator. For instance, the duration of noncompliance may have been significant, or the violator may have gained a significant economic benefit, such that non-ESA enforcement (i.e., enforcement under the Section 7 ERP) is appropriate.

For purposes of this Pilot, the OECA ESA Policy prohibition against the use of ESAs for a repeat violation does *not* apply *provided* the violation was a prior Section 7(c) reporting violation for which a Notice of Warning (NOW) and/or a single prior ESA was issued pursuant to FIFRA Sections 9(c)(3), 14(a)(2) or 14(a)(4). Under OECA's ESA Policy, a "repeat violator" is a

"violator who, in the past five years, has had the same or closely-related violations: 1) at the facility where the instant violation occurred; or 2) at multiple facilities, i.e., three or more facilities, under the ownership, operation, or control of the violator. The five-year period begins to run when [the] federal . . . government has given the violator notice of a specific violation, without regard to when the original violation cited in the notice actually occurred."⁴

A "closely-related" violation means any FIFRA violation for which the violator has received written notice from EPA or the U.S. Department of Justice that the respondent has violated a FIFRA requirement. The written notice may be in the form of a previous ESA settlement, Consent Agreement and Final Order (CAFO), or judgment. The prior violation may have involved any establishment owned, operated or controlled by the violator.

The Region has the discretion to issue an ESA up to two separate occasions to address Section 7(c) violations within a five year period following issuance of the initial NOW, i.e.: the first violation(s) would be resolved by a NOW under the Section 7 ERP; the second violation(s) could be addressed by an ESA; and a subsequent (third) violation also could be addressed with an ESA. The five-year window commences on the date of issuance of the initial NOW, i.e., the window is *not* a "rolling" timeframe that begins anew with the issuance of each successive ESA. See Figure 1.

⁴ OECA ESA Policy at 10.

Figure 1. Hypothetical				
		Violation (V)	Response	Rationale
First 5-year "repeat violator" window	Year 1	V #1 →	NOW	An NOW triggers commencement of the 5-year period.
	↓	V #2 →	ESA #1	Issuance of an ESA does <u>not</u> trigger commencement of a new 5-year period (i.e., no "rolling" timeframe).
	↓	V #3 →	ESA #2	
	↓ Year 5	V #4 →	ERP	No ESA. Continued non-compliance after an NOW and two ESAs suggests a systemic problem that warrants ERP enforcement.
Next 5-year "repeat violator" window	Year 6 and thereafter	V#5 etc. →	ERP	The initial 5-year "repeat violator" period has expired – and a written determination for a new violation could trigger commencement of a new 5-year period, but it does <u>not</u> under this Pilot. Continued non-compliance after an NOW and two ESAs suggests a systemic problem that warrants ERP enforcement.

An ESA may not be used to address a fourth or subsequent violation regardless whether it occurs within five years of issuance of the initial NOW or thereafter (even though the repeat violator five-year time frame has ended). More than two separate occurrences after issuance of the initial NOW may indicate a systemic problem that should be addressed with more formal enforcement consistent with the Section 7 ERP.

Also, Regions should issue a second ESA only where the first ESA attained a significant increase in compliance.⁵ Under this pilot, the penalty for a second ESA is greater than for the first (although the penalty for either is less than would be calculated under the Section 7 ERP). See Section VII.

VI. Complete Enforcement Program

Regions should continue to operate "a complete compliance and enforcement strategy" for FIFRA violations which include an appropriate balance of ESA and non-ESA enforcement activities.

⁵ A second ESA may be appropriate if the first resulted in compliance at virtually all of the establishments, so that the second ESA will address the rare or limited number of violation(s) committed by only a few of the establishments. Conversely, as discussed in Section V, if the prior ESA has not resulted in a general *trend toward increased* compliance, then a second ESA is not appropriate even though other eligibility criteria may be met.

1	2	3	4	5	6	7
	Section 7 ERP		First ESA		Second ESA^{3/}	
Violation	1st Violation	2nd Violation ^{1/} GBP	75% Discount	Final Penalty (25% of GBP^{2/})	50% Discount	Final Penalty (50% of GBP^{2/})
Late Reporting	NOW	C-I - \$3,300	825	800	1,650	1,700
		C-II - \$1,650	413	400	825	800
		C-III - \$1,100	275	300	550	600
Non- Reporting	NOW					
	If no response:					
	C-I - \$3,300	C-I - \$4,950	1,238	1,200	2,475	2,500
	C-II - \$1,650	C-II - \$3,300	825	800	1,650	1,700
	C-III - \$1,100	C-III - \$1,650	413	400	825	800
Incomplete Report- Minor	Informal Response/ NOW	NOW				
Incomplete Report- Major	NOW	C-I - \$3,300	825	800	1,650	1,700
		C-II - \$1,650	413	400	825	800
		C-III - \$1,100	275	300	550	600

1/ There is no COLA adjustment. Memorandum, S. Shinkman, Director, OECA/OCE (Dec. 6, 2013).
2/ The reduced penalty is rounded to nearest \$100.
3/ Fourth and subsequent violations are not ESA-eligible.

VIII. Environmental Benefits

The OECA ESA Policy requires that ESAs obtain environmental benefits, as well as penalties. The minimum environmental benefit from an ESA is that the respondent is returned to compliance and modifies its practices so as to prevent future noncompliance.

For a respondent that has a duty to report FIFRA Section 7 activity, the ESA settlement document must compel the respondent to fulfill such duty as a condition of settlement.

IX. Enforcement Response Policy Enforcement

Regions are expected to pursue appropriate enforcement as provided by the Section 7 ERP if, within 30 (calendar) days of respondent's receipt of the ESA offer, the respondent declines or does not adequately respond to the settlement offer. An adequate response includes returning the signed agreement, paying the penalty, and certifying that the violation has been corrected. This deadline is important so that, if a respondent fails to meet the ESA deadlines, cases do not languish and the Region may proceed promptly to non-ESA enforcement.

X. Pilot Use and Duration

Regions have the option to implement the FIFRA ESA Pilot; implementation of this Pilot is not mandatory. OCE will review the FIFRA ESA Pilot at the end of the one-year implementation period and determine whether to extend it (with or without modification) based upon information reviewed under Section XI, below.

Any settlement agreement entered into under this Pilot constitutes a Final Order within the meaning of the Section 7 ERP and 40 C.F.R. Part 22.

XI. Pilot Review

OCE will consider the following information when it reviews implementation of the FIFRA ESA Pilot in each Region:

- The Region's entire FIFRA enforcement program, to confirm that ESAs are "part of a total compliance and enforcement program" as required by the OECA ESA Policy. See Section VI, above.
- The number of ESA offers and settlements.
- The accomplishments of the Region's entire FIFRA enforcement program, including the number of cases, value of penalties, and the value of any Supplemental Environmental Projects or settlement conditions.
- The Region's follow-up enforcement consistent with the Section 7 when ESA respondents fail to timely meet their obligations. See Section IX, above.

Also, OCE will seek the Region's feedback regarding:

- Whether the FIFRA ESA Pilot enabled the Region to resolve small cases more quickly and allowed staff to focus resources on more significant cases.
- The Region's approach to ESA settlements; the Region's rationale for its approach; and the results from ESA settlements. See Section VII, above.

XII. Model Documents

Regions may use the appended Model Notice Letter (Attachment C) and Model Settlement Agreement (Attachment D) in implementing the FIFRA ESA Pilot. Also, the Region may elect to use a "Return to Compliance Worksheet" (not included here) that would require the respondent to describe the actions taken to correct violations and provide documentation (e.g., photographs, copies of appropriate documentation) to show that each violation has been corrected.

ATTACHMENT B

FIFRA Section 7 Expedited Settlement Agreement (ESA) Pilot Eligible Violations

The following violations are eligible for expedited settlement, consistent with the conditions of the FIFRA ESA Pilot. Except as noted, the violation descriptions and citations are copied from the applicable ERP for FIFRA Section 7.⁶

1. Incomplete Reporting

A report that does not contain all the required information or contains incorrect information is considered an incomplete report. Incomplete reporting violations are categorized as either minor or major incomplete reporting violations, based on the seriousness of the error, and treated accordingly.

a. Minor Incomplete Reporting

EPA considers a minor reporting violation to be missing or incorrect information in a report that is non-substantive and easily corrected by the producer. Examples of minor errors are: no date on the signature line, no telephone number, incorrect market codes, incorrect product types, incorrect use classifications, typographical errors, and all other information the Agency has determined to be necessary to include on the annual production report to help clarify and support the purpose of the report.

b. Major Incomplete Reporting

EPA considers a major reporting violation to be all other missing or incorrect information in a report that cannot be classified as a minor error. For example, a producer fails to report a pesticide that was produced in the preceding year or fails to report the amount of the pesticide that was produced in the preceding year. Other examples of major errors are: failing to report the amounts of pesticide sold or distributed and no EPA registration number.

2. Late Reporting

If a company official submits the report 30 or fewer days after the March 1st due date or 30 or fewer days after the due date of the initial report, it is a late report. Reports not postmarked but received via mail by March 5th are considered to have been postmarked by March 1st.

3. Non-Reporting

If a company official fails to submit the annual report within 30 days after the March 1st due date, or the initial report within 60 days after the initial report is due, the establishment will be considered as non-reporting. Establishments where no production occurred during the year are still required to submit a report (indicating no production) within the 30-day time-frame for annual reports or they will be considered as non-reporting.

⁶ FIFRA Section 7 ERP (Updated May 2010).

ATTACHMENT C

FIFRA § 7 Expedited Settlement Agreement (ESA) Pilot Model Notice Letter

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Company Contact Address]

Re: Section 7 Notice of FIFRA Requirements;
Opportunity for Expedited Settlement within Thirty (30) Days

Dear **[Establishment Operator]**:

The U.S. Environmental Protection Agency ("EPA"), Region __ **[Number]**, has conducted a review of information available concerning your pesticide producing establishment, _____ **[EPA Establishment Number]** in __ **[city, state]**. EPA's review indicates that your establishment has failed to comply with the following requirement(s) concerning pesticide production reporting under Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, as amended ("FIFRA" or the "Act") and its implementing regulations at 40 C.F.R. Part 167.

[Requirement(s) violated by Respondent]

We encourage you to immediately review your compliance with the foregoing requirement(s). If you determine that you are not subject to or have not violated the foregoing requirement(s), you may provide a written explanation, along with any relevant documentation to _____ **[EPA Contact]** at the EPA address shown below within thirty (30) days of your receipt of this letter. (All days in this communication are computed as calendar days.)

If, however, you are out of compliance, EPA is committed to the fair and rapid settlement of this matter. Section 14 of FIFRA authorizes EPA to pursue civil penalties of up to \$7,500 per violation of FIFRA. EPA, however, is hereby offering to quickly resolve the alleged violation(s) through an expedited settlement process.

To take advantage of the expedited settlement process, you must comply with each of the following conditions within thirty (30) days of your receipt of this letter:

- (1) Correct the violation(s). **[spell out the required action(s), if appropriate]**

(2)⁷ Complete and return to EPA the enclosed Expedited Settlement Agreement and Final Order ("Agreement" or "ESA/FO") as directed below. Please note that in signing the Agreement, you are certifying under penalty of law that you: (a) have corrected the violation(s); (b) *have submitted true and accurate documentation of compliance*⁸; (c) have provided a deposit to pay the assessed penalty (below); and (d) release your deposit to EPA upon entry of the Agreement. Failure to meet these conditions means you may be liable for the original violations, as well as liable for making a false representation to the U.S. Government under 18 U.S.C. § 1001. Also, by signing the Agreement, you agree to waive your opportunity for a hearing or appeal concerning your violation(s).

(3) Provide a deposit for payment of the assessed penalty of \$ [Amount](_____ dollars and 00 cents [write out amount]) in accordance with the following directions. (The deposit amount and assessed penalty amount are identical.)

A. Submit the deposit via one of the following alternative methods:

- Provide a check or money order for payment sent by U.S. mail to: U.S. Environmental Protection Agency, P.O. Box 979077, St. Louis, MO 63197-9000.
- Provide a check or money order for payment sent by overnight/common carriers (*i.e.*, FedEx, DHL, UPS) to: U.S. Environmental Protection Agency, Government Lockbox 979077, 1005 Convention Plaza SL-MO-C2-GL, St. Louis, MO 63101.
- Make electronic deposit for payment (Vendor Express, Fedwire, Pay.gov) at <http://www2.epa.gov/financial/makepayment> following the online directions for an electronic funds transfer (EFT).

B. To ensure proper credit, include all of the following information with your deposit:

- The docket number shown on the enclosed Agreement. (For checks, money orders, and other non-electronic deposits, write the docket number on the deposit instrument.);
- Respondent name and address (as it appears on the Agreement documents);
- Respondent contact person's name and telephone number(s);

⁷ [NOTE TO REGIONS: Paragraphs (2) and (3) and references throughout regarding payment of a penalty "deposit" are not subject to modification, since these provisions adopt OGC-approved requirements.]

⁸ [NOTE TO REGIONS: Include this clause if the Region directed Respondent to submit a complying § 7(c) report under Paragraph (1) of this letter.]

- EPA contact person's name and telephone number (listed below); and
- Reason for the deposit.

You should send your signed Agreement (along with proof of payment of the penalty deposit) by certified U.S. mail, return receipt requested, to:

[EPA Contact and Address]

Proof of payment of the penalty deposit should be a copy of the check/money order, or a statement of affirmation or receipt of an electronic funds transfer. *Also, include documentation demonstrating that you are now in compliance with the requirement(s) that were alleged to be violated.*⁹

If you can demonstrate in writing that it is technically infeasible or impracticable to correct your violation(s) within thirty (30) days, upon request, EPA, at its discretion, may grant an extension of up to thirty (30) days. You must request that extension and demonstration of infeasibility or impracticability in writing to EPA no later than 10 days before the end of the initial thirty (30) day compliance period. The request must clearly indicate whether you intend to take advantage of this expedited settlement offer and contain a schedule for when you will come into compliance (which must not extend beyond the extension period). Any extensions must be granted in writing by EPA.

If you do not follow the procedures outlined in this letter for expedited settlement (e.g., correct the violation(s), pay the assessed penalty deposit, and sign and return the Agreement) within thirty (30) days of your receipt of this letter, then this settlement offer will be automatically withdrawn, without prejudice to EPA's ability to file an enforcement action for the cited violation(s) and to seek up to the statutory maximum penalty for each violation.

If you have any questions or wish to discuss the general circumstances of your case, then please contact the Enforcement Case Officer assigned to your case, _____ [Name] at _____ [Telephone Number and E-mail Address].

Sincerely,

[EPA FIFRA Manager's Name and Signature Block]

cc: [Persons to CC]

Enclosure:

Expedited Settlement Agreement and Final Order (ESA/FO)

⁹ [NOTE to REGIONS: Include this sentence if the Region directed Respondent to submit a complying § 7(c) report under Paragraph (1) of this letter.]

ATTACHMENT D

FIFRA § 7 Expedited Settlement Agreement (ESA) Pilot: Model ESA Settlement Agreement and Final Order (ESA/FO)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION [Number]**

IN THE MATTER OF:

[Firm/Company or Respondent's Name]
Respondent

) Docket No. _____
) [Number]
)
) EXPEDITED SETTLEMENT
) AGREEMENT AND
) FINAL ORDER
)

EXPEDITED SETTLEMENT AGREEMENT and FINAL ORDER¹⁰

1. The U.S. Environmental Protection Agency ("EPA") alleges that _____ [as applicable: Firm/Company Name, or Individual's Name] ("Respondent") failed to comply with Section 7(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136e(c).

2. Under Section 7(c) of FIFRA and 40 C.F.R. Part 167, Respondent was required to _____

**[Allege how Respondent was subject to the requirement, and
how Respondent failed to meet the requirement]**

3. EPA and Respondent agree that settlement of this matter for a civil penalty of \$ _____ (_____ dollars and 00 cents [write out amount]) is in the public interest.

4. EPA is authorized to enter into this Expedited Settlement Agreement and Final Order ("Agreement"), and this proceeding for the assessment of a civil penalty is simultaneously commenced and concluded, pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l and 40 C.F.R. § 22.13(b).

¹⁰ [REMINDER to REGIONS: A certificate of service is required under 40 C.F.R. § 22.5(a)(3); and the ESA/FO must be served as provided in 40 C.F.R. Part 22.]

5. In signing this Agreement, Respondent: (a) admits that Respondent is subject to the requirement(s) in Paragraph 2 (above); (b) admits that EPA has jurisdiction over Respondent and Respondent's conduct as alleged herein; (c) neither admits nor denies the factual allegations contained herein; (d) consents to the assessment of this penalty; and (e) waives any right to contest the allegations contained herein, and its right to appeal the proposed Final Order attached hereto.

6. By its signature below, Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that Respondent: (a) has corrected the alleged violation(s), *and has submitted true and accurate documentation of such correction along with this Agreement*¹¹; (b) has provided a deposit for payment of the civil penalty set forth in Paragraph 3 (above) in accordance with the penalty collection procedures provided to Respondent in EPA's letter entitled "Opportunity for Expedited Settlement within Thirty (30) Days"¹²; (c) has submitted true and accurate proof of deposit for payment of said civil penalty along with this Agreement; and (d) agrees to release said deposit for payment to EPA upon entry of the Final Order attached hereto.

7. Upon the effective date of this Agreement, payment of the civil penalty shall resolve only respondent's liability for Federal civil penalties for the violations and facts alleged herein.

8. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Agreement shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

9. EPA reserves all of its rights to take enforcement action for any other past, present, or future violations by Respondent of FIFRA, any other federal statute or regulation, or this Agreement.

10. Upon signing and returning this Agreement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to FIFRA.

11. Each party shall bear its own costs and fees, if any.

12. The Agreement authorized by EPA's execution of the Final Order attached hereto constitutes a final order under 40 C.F.R. Part 22.

13. This Agreement is binding on the parties signing below, and in accordance with 40 C.F.R. 22.31(b), is effective upon filing.

IT IS SO AGREED,

Name (print): _____

Title (print): _____

Signature: _____

Date _____

¹¹ [NOTE to REGIONS: Include the second clause only if the Region directed Respondent to submit a complying § 7(c) report.]

¹² [NOTE to REGIONS: For purposes of 40 C.F.R. Part 22, the Region may elect to fully re-state – rather than reference – the penalty collection procedures spelled out in the Notice Letter.]

APPROVED BY EPA:

[EPA Manager's Name]¹³

Date _____

[Title]

FINAL ORDER

Pursuant to the authority of Section ___ of FIFRA, ___ U.S.C. § ___, and according to the terms of this Agreement, IT IS HEREBY ORDERED THAT:

This Agreement shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region [XX]. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

IT IS SO ORDERED:

[Name]

[Regional Judicial Officer]

Date _____

¹³ **[REMINDER to REGIONS:** The signing manager should be the official position stated in the Regional Delegation of Authority under Section 14 of FIFRA.]